

a

LONGMAN (M) SDN. BHD.

v.

PUSTAKA DELTA PELAJARAN SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR

GUNN CHIT TUAN J

b

[CIVIL SUIT NO. C 615 OF 1981]

22 SEPTEMBER 1986

c

COPYRIGHT: *Action by plaintiff for infringement of copyright in a text-book translated from English to Bahasa Malaysia - General arrangements, language and features and errors similar to plaintiff's text - Whether book protected under Copyright Act 1969 - Substantial part of plaintiff's book - Whether within meaning of s. 8(1) of the Act.*

d

This was an action by the plaintiff for infringement of copyright in a text-book which was translated from a manuscript in English to Bahasa Malaysia by 3 Malay translators who were commissioned by it. The plaintiff contended that they were sole owners of the copyright in a book entitled "*Kursus Ulangkaji Rampaian Sains*" ("the said book"). The plaintiff first published the said book in 1979 and it was a book of general science for students preparing for the SPM examinations. The Bahasa Malaysia version was first published in 1979 and the reprint edition was published in 1980 or closer to 1979. Since 1979, the plaintiff has not assigned the copyright to anyone nor has a licence been granted by the plaintiff to anyone to publish or reproduce it.

e

50,000 copies of the first edition of the said book were sold quickly but sale of the reprint was badly affected after the defendant had brought out their book in 1980. The defendant's book was entitled "*Kursus Lengkap Peperiksaan SPM Rampaian Sains*"; the general arrangements, language and features and errors of which are similar to those of the said book.

Held:*f*

[1] The plaintiff's book as a whole was original and protected by copyright under the Copyright Act 1969 ("the Act").

g

[2] In considering whether what had been copied amounted to a substantial part of the plaintiff's book within the meaning of s. 8(1) of the Act, what the Court had to consider was the quality rather than the quantity of the pirated parts produced. The diagrams and tables are very vital parts of the plaintiff's book and that a substantial part had therefore been reproduced in the defendant's book.

h

[3] The copyists of the relevant diagrams were relieved of the necessity of using their own skill and labour in reproducing those tables and diagrams and had therefore taken a free ride on the efforts of the original author and artist.

[4] The parts taken were done *animo furandi*, that is with an intention on the part of the copyists of saving themselves time and labour.

[5] The defendant's use of the parts taken into the defendant's book was such as to compete with and affect the sales of the plaintiff's book as a result of which the plaintiff had to decide not to publish further editions.

[6] The injunction was granted and the defendant was ordered to deliver up all infringing copies and plates. An inquiry was also ordered as to damages or at plaintiff's option an account of profits and payments of all sums found due with interest thereon.

i

[Judgment with costs to plaintiff.]

Cases referred to:

Byrne v. Statist Company [1914] 1 KB 622
Scott v. Stanford Limited [1867] 3 Eq Cas 718
Ladbroke (Football) Ltd v. William Hill (Football) Ltd. [1964] 1 WLR 273

Legislation referred to:

Copyright Act 1969, ss. 2(1), 3, 4, (2), (2)(a), (2)(b), 5, 8(1), 12(1)

For the plaintiff - S.F.Wong M/s. Shearn Delamore & Co.
For the defendant - Choong Yik Son; M/s. Syarikat Choong Yik Son

JUDGMENT

Gunn Chit Tuan J:

This was an action by Longman Malaysia Sdn. Bhd., the plaintiff, for infringement of copyright in a text-book, which was translated from an manuscript in English to Bahasa Malaysia by three Malay translators who were commissioned by it. It was conceded by the defence that the plaintiff is a company under Malaysian laws. It is a limited company with a registered office at Wisma Damansara, Jalan Semantan, Kuala Lumpur, and carry on the business of publishers of literary works of both foreign and local authorship.

In this case the plaintiff in its statement of claim averred that it is the sole owner of the copyright and rights in the nature of copyright in a book entitled “*Kursus Ulangkaji Rampaian Saints*” (P1) According to its first witness, Madam Koay Gaik Kooi (PW1) who is its publishing director now and was its publisher in the year 1979, she had a few editors working under her and coordinated their work. She told the Court that the plaintiff first published P1 in 1979. It is a book of general science for students preparing for the SPM examination and contains three subjects, namely chemistry, physics and biology. The manuscript of P1 was presented to the plaintiff in the English language and the authors of the English manuscript were See Tho Weng Fong, John May and JGR Ricks. The jointly wrote the three sections of the book.

After obtaining advice as to who were suitable translators, the plaintiff commissioned Puan Zaleha Raub to translate the biology section. PW1 produced a copy of a letter appointing her (P2) and Puan Zaleha after her appointment translated chapters 1, 4, 7, 10 and 23 of P1. She was paid fee of RM850 for the translation, and PW1 also produced her acknowledgment of the fees paid (P3), and also a statement signed by Puan Zaleha stating that the copyright of her translation became the property of the plaintiff (P4). One Encik Ahmad Buyong translated the chemistry section and documents - relating to his appointment, acknowledgement of payment of fees and statement agreeing that the copyright of his translation belongs to the plaintiff were also produced (P5, P6 and P7). The physics section was translated by Encik Jalal bin Mohd. Nor, and again copies of his appointment letter, acknowledgement of payment of fees and signature on a statement agreeing that the copyright of his translation belongs to the plaintiff were produced (P8, P9 and P10)

According to PW1 the Bahasa Malaysia version was first published in 1979, and the reprint edition was published in 1980 or closer to 1979. Since 1979 the plaintiff has not assigned the copyright of P1 to anyone nor has a licence been granted by the plaintiff to anyone to publish or reproduce it.

- a** Under cross-examination, PW1 confirmed that the three translators were not employees of the plaintiff but were only employees for piece-work. The aim was to employ them to translate the manuscripts as accurately as possible as the authors of P1 were not competent in Bahasa Malaysia. The amount of fees paid to them depended on the amount of work done, i.e., according to the number of works translated and the biology section was the longest. In answer to a question by the Court, the witness said that 50,000 copies of the first edition of
- b** P1 were sold very quickly but sale of the witness said that was why it was decided not to publish further editions.

The second witness for the plaintiff was Chua Hong Koon (PW2). He said that he was employed by the plaintiff as an editor. He is an editor for mathematics and science, and when shown P1 confirmed that he edited ten of fifteen chapters whilst the other chapters were edited by his senior editor, the late Baharuddin Ahmad. This witness also identified a

c copy of "*Kursus Lengkap Peperiksaan SPM Rampaian Sains*" (D11). He said that the publisher of D11 was Pustaka Delta Pelajaran Sdn. Bhd. (the defendant) and the first edition was made available in 1980. Another copy of "*Kursus Lengkap Peperiksaan SPM Rampaian Saints*" (P12) was also produced and identified by this witness. He told the Court that it was published by the defendant in 1981. P12 was the first reprint of D11. Yet another book

d (P13) was produced and identified by the witness as the first reprint of P1.

- In the plaintiff's statement of claim it was averred that the defendant had infringed the plaintiff's copyright and rights in the nature of copyright in P1 by publishing, distributing, selling and by way of trade exposing, exhibiting and offering for sale without the licence of the plaintiff, the work entitled "*Kursus Lengkap Peperiksaan SPM Rampaian Sains*" the general arrangements, language and features and errors of which are similar to the plaintiff's
- e** P1. Particulars of infringement were listed in an Annexure I to the statement of claim, and are as follows:

List of main similarities between the plaintiff's literary work entitled "*Kursus Ulangkaji Rampaian Sains*" and the defendant's literary work entitled "*Kursus Lengkap Peperiksaan SPM Rampaian Sains*".

- | f | Plaintiffs' literary work entitled
"Kursus Ulangkaji Rampaian Sains". | Defendants' literary work entitled
"Kursus Lengkap Peperiksaan SPM
Rampaian Sains" |
|----------|--|---|
| | 1. The division of chapters (15 chapters) and the wordings in pp. vii to x. | 1. The division of chapters (15 chapters) and the wordings in pp. vii to x almost the same (especially in pp. vii and viii) |
| g | 2. The table in p. 26. | 2. The table in p. 19 |
| | 3. The diagrams depicted in p. 34 under Rajah 3.1 and 3.2 | 3. The diagrams depicted in p. 27 under Rajah 3.1 |
| | 4. The table on p. 57. | 4. The table on p. 53 |
| h | 5. The diagrams and labels in p. 71 under Rajah 5.11. | 5. The diagrams and labels in p. 63 under Rajah 5.10 |
| | 6. The diagrams and labels in p. 71 under Rajah 5.12. | 6. The diagrams and labels in p. 64 under Rajah 5.11 |
| i | 7. The diagram in p. 72 under Rajah 5.13. | 7. The diagrams in p. 64 under Rajah 5.12 |

- | | | |
|--|--|----------|
| 8. The diagram in p. 73 under Rajah 5.14 | 8. The diagram in p. 65 under Rajah 5.13 | a |
| 9. The diagram in p. 73 under Rajah 5.15 | 9. The diagram in p. 66 under under Rajah 5.16 | |
| 10. The diagram in p. 90 under Rajah 6.18 | 10. The diagram in p. 83 under Rajah 6.17 | b |
| 11. The table in p. 122 under 8.3 - under the heading Keputusan for column C- "Lemak dan Minyak" - the statement Lemak dan minyak memberikan tanda lutsinar yang kekal lama'. The reprinted copy has the corrected version which reads lemak dan minyak memberikan tanda lutcahaya yang kekal lama'. | 11. The table in p. 107 under 8.2- under the heading Keputusan for "Lemak dan Minyak" - the Statement 'Lemak dan minyak memberikan tanda lutsinar yang kekal Lama' is the same | c |
| 12. The diagram in p. 137 Rajah 9.15. | 12. The diagram in p. 121 under Rajah 9.16 | |
| 13. The diagram in p. 176 under Rajah 12.3 -in the first printing (in 1979) due to printing error one dot has been missed out on the second bar from the left (left diagram). The error has been subsequently corrected in the reprint. | 13. The diagram in p. 158 under Rajah 12.6 the dot has also been missed out on the second bar from the left (left diagram) | d |
| 14. The diagram in p. 177 under Rajah 12.7. | 14. The diagram in p. 162 under Rajah 12.13 | e |

PW2 as well as Cik Goh Swee Bee (DW1) who is the science editor of the defendant as well as in year 1979 were examined-in-chief, cross-examined and re-examined monotonously by Counsel on both sides on each one of the main similarities between the plaintiff's P1 and the defendant's D11 as listed above.

Having heard their evidence as well as having examined both P1 and D11 and the relevant tables and diagrams in them, I found that both books were each divided into fifteen chapters followed by a section called Peperiksaan or Contoh Kertas Peperiksaan. The chapter headings are practically similar and some of the headings are also similar and gives one the impression that the sub-division of the chapters in D11 were copied from P1. The number of topics were similar except for the choice of words. But PW1 conceded that the chapters in P1 follow the syllabus set by the Ministry of Education (D14). On this point I was prepared to accept the contention of the defence that the division of chapters in the defendant's book also followed the Ministry of Educations' syllabus, and two text-books called "*Rampaian Sains Untuk Sekolah-Sekolah Menengah Tingkatan IV dan V*" (D15A and D15B) published by the plaintiff in 1977 but the copyright of which belongs to the Ministry of Education. And that possibly explains why the defendants' book D11 also has fifteen chapters. But when one looks at the relevant tables in pp. 26, 57 and 122 of the plaintiff's book P1 and then look at the corresponding tables in pp. 19, 53 and 107 of the defendant's book D11, one find that those tables in the defendants' book D11 are remarkably similar and I was satisfied and found that they were copied from the corresponding tables in the plaintiff's book P1. I have also examined not less than six times during the examination, cross-examination

f

g

h

i

- a* and re-examination of the two witnesses, PW2 and DW1, the relevant diagrams in pp. 34, 71, 72, 73, 90, 137, 176 and 177 of the plaintiff's book P1 and have compared them with the corresponding diagrams in pp. 27, 63, 64, 65, 66, 83, 121, 158 and 162 of the defendant's book D11. I was satisfied and found that the diagrams in the defendant's book D11 were identical or very similar to the diagrams found that the diagrams in the defendant's book D11 were identical or very similar to the diagrams in the plaintiff's book P1. In fact after the defendant realised that they had copied the diagrams in the plaintiff's book it changed those diagrams when they brought out their first reprint in 1981 (P12).
- b*

- c* Under cross-examination PW2 also confirmed that the sales of the plaintiff's second edition dropped tremendously after the defendant had brought out their book in 1980. This witness claimed that the plaintiff was the first to prepare a revision course for students based on the Ministry of Education's syllabus marked D14, and he also stated that whoever was the artist of the diagrams in the defendant's book D11 did not go through the same mental exercise as their own artist when the latter first drew the relevant diagrams in the plaintiff's book. The witness also explained that the ideas expressed by the diagrams in the plaintiff's book could have been shown in other ways. The illustrations in the form of diagrams used in the plaintiff's book were essential and vital for without those illustrations, students buying the book would not understand it so well.

- d* During cross-examination DW1 said that she was editor of the defendant's book D11. She was then shown the cover of that book and then asked why her name was not printed on the cover. Her answer was that it is the policy of the defendant not to put the name of its in-house editor on their books. She however admitted that she was not in a position to speak for the author or authors of the manuscript of D11. She agreed that D11 was published after P1 and that those authors of D11 should have referred to all source materials first. She conceded that she was not in a position to speak for the authors of the manuscripts of D11 as to whether they had checked P1 before preparing the manuscripts of D11. She also agreed that the choice of words were the same in the illustrations in P1 and D11, and that the manner of their presentation could be different, but denied that the illustrations in D11 have been taken from the plaintiff's book.
- e*

- f* Mr. Choong Yik Son, Counsel for the defendant, submitted that the issue in this case was whether the plaintiff's copyright in P1 should be protected. He referred to s. 4 (2) of the Copyright Act 1969, which reads as follows:

4.(2) A literary, musical or artistic work shall not be eligible for copyright unless-

- g* (a) sufficient effort has been expended on making the work to give it an original character; and
- (b) the work has been written down, recorded or otherwise reduced to material form.

and submitted that there was no evidence of the amount of skill involved in producing P1. Counsel then referred to s. 8(1) of the said Act regarding the nature of copyright in literary, musical, artistic works and cinematograph films which is as follows:

- h* 8.(1) Copyright in a literary, musical or artistic work or in a cinematograph film shall be the exclusive right to control the doing in Malaysia of any of the following acts, namely the reproduction in any material form, the communication to the public and the broadcasting, of the whole work or a substantial part thereof, either in its original form or in adaptation.

- i* and stressed on the words "a substantial part thereof". He submitted that a few illustrations or diagrams reproduced would not fall within the above sub-section of the Act. Having pointed out that the defendant's book has over 366 diagrams whereas the plaintiff's book

has only 304 diagrams, Counsel also stated that the defendant's work has 491 objective questions, whereas the plaintiff's work has only 341 objective questions, and contended that the few similar diagrams do not amount to a substantial part of the plaintiff's book but conceded that whether it was a substantial part or not is a question of fact.

Mr. S.F. Wong, Counsel for the plaintiff, pointed out that no copyright in Malaysia shall subsist otherwise than by virtue of the Copyright Act 1969 (s. 3). He submitted that the plaintiff's copyright in the Bahasa Malaysia version comes within the above-quoted s. 4(2)(a) of the said Act. Counsel then referred to the meaning of "literary work" in s. 2 (1) of the said Act which is as follows:

"literary work" means, irrespective of literary quality, any of the following, or works similar thereto:

- (a) novels, stories and poetical works;
- (b) plays, stage directions, film scenarios and broadcasting scripts;
- (c) text-books, treaties, histories, biographies, essays and articles;
- (d) encyclopaedias, dictionaries and other works of reference;
- (e) letters, reports and memoranda;
- (f) lectures, addresses and sermons,

but does not include official texts of a legislative, administrative and legal nature nor official translations of such texts.

He pointed out that the plaintiff's book P1 is a text-book and submitted that the defendant had reproduced a substantial part of the plaintiff's book within the meaning of the said s. 8(1) of the Act. As regards the meaning of reproduction, Counsel referred to the definition of that expression in s. 2(1) of the Act which reads as follows:

'reproduction' means the making of one or more copies, and includes, in the case of an artistic work, a version produced by converting the work into a three-dimensional form or, if it is in three dimensions, by converting it into a two-dimensional form, and reference to 'reproducing' a work shall be construed accordingly;

He also referred to the meaning of the word "copy" in the said s. (2)1 which is as follows:

copy' means a reproduction of work in written form, in the form of a recording or cinematograph film, or in any other material form;

Next, Counsel referred to s. 12(1) of the said Act regarding the first ownership of copyright which is as follows:

12(1) Copyright conferred by s. 5 and 6 and of this Act shall vest initially in the author:

Provided that notwithstanding the provisions of subsection (6) of s. 13 of this Act, where a work-

- (a) is commissioned by a person who is not the author's employer under a contract of service or apprenticeship, or
- (b) not having been so commissioned, is made in the course of the author's employment, the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, subject to any agreement between the parties excluding or limiting such transfer.,

and stated that the copyright in P1 had been transferred to the plaintiff by the three translators and belongs to the plaintiff who had commissioned its translation. Counsel also stated that the plaintiff was claiming copyright under s. 5 of the said Act which confers

a copyright on every work eligible for copyright under s. 5 of the said Act which confers copyright on every work eligible for copyright by virtue of citizenship or residence of the author being a qualified person, that is to say:

- (a) an individual who is a citizen of, or is a permanent resident in Malaysia; or
- (b) a body corporate constituted and vested with legal personality under the laws of Malaysia, and established in Malaysia

b

Here it has been pointed out above the defence had conceded at the commencement of trial that the plaintiff is a body corporate constituted and vested with legal personality under the laws of Malaysia, and is therefore a qualified person eligible for copyright conferred by virtue of s. 5 of the said Copyright Act 1969.

c

Mr. Wong then referred to *Byrne v. Statist Company* [1914] 1 KB 622 in which case Bailhache J held that a translation may be the subject of copyright. In our present case it was not contended by the defence that the translation was not entitled to copyright protection; but even if that contention had been advanced, I was prepared with respect, to follow the *ratio* in that English case and to hold that a translation of a literary work is eligible for copyright in this country.

d

Counsel also stated that one must look at the time, labour and skill involved in translating the book, i.e., that it was not copied from someone else. He submitted that s. 4 of the Copyright Act has been complied with and then referred to subsection 2 (b) of the said s. 4 of the Act and stated that text-books included diagrams and tables which have been "recorded or otherwise reduced to material form".

e

Another case referred to by Counsel was *Scott v. Stanford Limited* [1867] 3 Eq Cas 718 in which the plaintiff had published statistical returns of all coal imported into London, and the defendant in giving statistics of the whole country, had copied from the plaintiff's working to the extent of one-third of the whole of defendant's work, at the same time acknowledging the source from which his information was derived. It was held by Sir Page Wood V.C. that, having regard to the quantity and matter of the information which had been republished without the exercise of any defendant's thought and labour, and the prejudice to the plaintiff in having the sale of his work superseded, the plaintiff was entitled to an injunction. His Lordship in that case as follows:

f

The general principles guiding the Court in cases of this description could hardly be found better stated than in the following words, used by Mr. Justice Story in *Folsom v. Marsh* cited in Mr. Palmer Phillips' Treatise on Copyright: 'In short, we must, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the material used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work.'

g

...

No man is entitled to avail himself of the previous labours of another for the purpose of conveying to the public the same information, **although he may append additional information to that already published.** (emphasis supplied).

h

Counsel then submitted that the defendant had reproduced a substantial part of the plaintiff's book P1. He also referred to *Ladbroke (Football) Ltd. v. William Hill (Football) Ltd.* [1964] 1 WLR 273, 276, 277, 283 & 293 in which case the plaintiff bookmakers expended substantial effort and used considerable skill and judgment in arriving at an attractive assortment of bets. These were embodied in their football coupons. The defendant bookmakers copied

i

portions of the coupons and were held to have infringed the plaintiff's copyright by the House of Lords. Mr. Wong then referred the Court to the following passages in the speeches of Lord Reid, Lord Evershed and Lord Pearce respectively in that case:

... Broadly, reproduction means copying, and does not include cases where an author or compiler produces a substantially similar result by independent work without copying. And, if he does copy, the question whether he has copied a substantial part depends much more on the quality than on the quantity of what he has taken. One test may be whether the part which he has taken is novel or striking, or is merely a common place arrangement of ordinary words or well-known data. So it may sometimes be a convenient short cut to ask whether the part taken more correct approach is first to determine whether the plaintiffs' work as a whole is "original" and protected by copyright, and then to inquire whether the part taken by the defendant is substantial.

(Lord Reid)

It is not in doubt that what amounts in any case to substantial reproduction within the meaning of ss. 6 and 49 of the Copyright Act again cannot be defined in precise terms but must be a matter of fact and degree. It will, therefore, depend, not merely on the physical amount of the reproduction, but on the substantial significance of that which is taken.

(Lord Evershed).

Did the defendants reproduce a substantial part of it? Whether a part is substantial must be decided by its quality rather than its quantity. The reproduction of a part which by itself has no originality will not normally be a substantial part of the copyright and therefore will not be protected. For that Which would not attract copyright except by reason of its collocation will, when robbed of that collocation, not be a substantial part of the copyright and therefore the Courts will not hold its reproduction to be an infringement. It is this, I think, which is meant by one or two judicial observations that "there is no copyright" in some unoriginal part of a whole that is copyright. They afford no justification, in my view, for holding that one starts the inquiry as to whether copyright exists by dissecting the compilation into component parts instead of starting it by regarding the compilation as a whole and seeing whether the whole has copyright. It is when one is debating whether the part reproduced is substantial that one considers the pirated portion on its own.

(Lord Pearce).

Mr. Wong concluded his address by referring to pp. 168 *et sequ* of *The Law of Intellectual Property* by Stainforth Ricketson on the meaning of the phrase "substantial part". The learned author of that text-book suggested that the determination of what is a substantial part might involve delicate questions of degree. But nevertheless, there are a number of factors which may assist in this process. According to the learned author the originality of the part taken may be a very relevant consideration. If the part taken represents the application of a high degree of skill and labour on the part of the author, it may be regarded as substantial although comparatively slight in quantitative terms. On the other hand, where the part taken involves little originality it may not be regarded as substantial even though quantitatively it may form quite a large part of the work.

A second relevant factor, according to the learned author, is the object or purpose which lies behind the taking and the use which is made of the part taken. Thus, if the purpose of the copyist is the same as that of the author of the original, this may lead the Court to hold that the part taken is substantial. This is particularly so, where the copyist is thereby relieved of the necessity of using his own skill and labour and is enabled to take the free ride on the efforts of the original author. Thus it seems the Courts will readily reach the conclusion that a substantial part has been taken when this is done *animo furandi*, i.e., with an intention on the part of the copyist to take from the original work for the purpose of saving himself time

- a** and labour. The third relevant factor, according to the learned author, is whether the defendant's use of the part taken will be such as to interfere with the sales of the original or to compete with it. In this case Mr. Wong submitted that the illustrations and tables are very vital part of the plaintiff's book P1, and that skill was involved in producing the substantial part which was copied in the defendant's book (D11) in which there was no mental effort on the part of the defendant, and I might add, on the part of the authors and artist or
- b** artists of the manuscript of D11.

- In considering the question of whether a substantial part of the plaintiff's book, P1 was copied in the defendant's book, D11, I therefore with respect, adopted and followed what Their Lordships in the case of *Ladborke (Football) Ltd v. William Hill (Football) Ltd.* had suggested was the more correct approach. I found that the plaintiff's book P1 as a whole was original and protected by a copyright under our Copyright Act 1969. And in considering
- c** whether what has been copied amounted to a substantial part of P1 within the meaning of s. 8(1) of the same Act, I found as a matter of fact and degree that it was a substantial part thereof not because of the physical amount of the reproduction but because of the substantial significance of that which was copied. I bore in mind that what the Court had to consider was the quality rather than the quantity of the pirated parts reproduced. Bearing in mind and adopting what the learned author of the *Law of Intellectual Property* has suggested
- d** were factors which might assist in this process, I found, firstly, that although the parts copied might not represent the application of a high degree of skill and labour, on the part of the author or artist of P1, yet it did, as submitted by Mr. Wong, involve a certain amount of skill on the part of the artist in producing those diagrams. As regards the second relevant factor, I found that the object or purpose of the author or artist of D11 in copying those tables and diagrams was the same as that of the author and artists of P1, that is to say to
- e** make their books more readable and comprehensible to students taking the SPM examination. In doing so, I was of the view that the copyists of the relevant diagrams and tables were thereby relieved of the necessity of using their own skill and labour in reproducing those tables and diagrams and had, therefore, taken a free ride on the efforts of the original author and artist. I also reached the conclusion that the parts taken were done *animo furandi*, that is with an intention on the part of the copyists of saving themselves time and labour. Lastly,
- f** there was also evidence accepted by me to prove that the defendant's use of the parts taken into D11 was such as to compete with and affect the sales of the plaintiff's book (P1), as a result of which the plaintiff had to decide not to publish further editions of P1. I therefore agreed with Mr. Wong and found as a matter of fact that the diagrams and tables are very vital parts of the plaintiff's book, P1 and that a substantial part thereof had therefore been reproduced in the defendant's book, D11.

- g** To summarise therefore, in conclusion, there was the plaintiff's book P1 in which copyright subsisted. Apart from an averment in the defendant's statement of defence, this fact was not really disputed by the defence during the trial of this action. And having heard the evidence adduced by the plaintiff, I found that copyright did subsist in the plaintiff's book P1 under our Copyright Act 1969. The plaintiff has also adduced evidence which was accepted
- h** by me to prove that it owns the copyright of the book P1 by virtue of the relevant provisions of the said book. The only serious issue was whether there has been an infringement of the plaintiff's copyright in P1, namely the reproduction in the defendant's book D11 of a substantial part of the plaintiff's book P1, within the meaning of s. 8(1) of the Act. Having regard to the evidence adduced and having considered the submissions of Counsel on both sides, I was satisfied and found as a fact that there has been a reproduction of a substantial
- i** part of the plaintiffs book P1 in the defendants' book D11. Before delivering judgment I

indicated to Counsel for the plaintiff that as the evidence adduced showed that there was only infringement of the plaintiff's book P1 in the defendant's book D11 and not in their first reprint (P12) the injunction prayed for by the plaintiff and which the Court intended to grant would only cover the defendants's book D11 and not their first reprint D12. I therefore directed that judgment be entered for the plaintiff against the defendant in accordance with the prayers for relief in the plaintiff's statement of claim dated 2 June 1981 as amended as follows:

1. I ordered that an injunction do issue, to restrain the defendant whether by itself, its directors, officers, servants or agents or any of them or otherwise howsoever from doing the following acts or any of them that is to say:
 - (i) reproducing without the licence of the plaintiff any copies of the work entitled "*Kursus Lengkap Peperiksaan SPM Rampaian Sains - Terbitan Pertama - (1980)*" or any other reproduction of the plaintiff's literary works entitled "*Kursus Ulangkaji Prampaian Sains*" or authorising any of the acts aforesaid or otherwise infringing the plaintiff's copyright in the said literary works entitled "*Kursus Ulangkaji Rampaian Sains*";
 - (ii) selling by way of trade, exposing or offering for sale or distributing for the purpose of trade without the licence of the plaintiffs any copies of the said literary works entitled "*Kursus Lengkap Peperiksaan SPM Rampaian Sains - Terbitan Pertama - (1980)*" or any other reproductions of the plaintiffs' said work entitled "*Kursus Ulangkaji Rampaian Sains*" and from authorising any of the acts aforesaid;
 - (iii) converting to their own use by publishing, selling offering for sale, exposing or distributing for the purpose of trade the literary work entitled "*Kursus Lengkap Peperiksaan SPM Rampaian Sains - Terbitan Pertama - (1980)*" or of plates used or intended to be used for making the same.
2. I ordered the defendant to deliver up all infringing copies and plates in its possession, power custody or control.
3. I ordered an inquiry as to damages or at the plaintiff's option an account of profits and payments of all sums found due upon such inquiry or account with interest thereon; and
4. I also ordered payment of costs by the defendant.

Also found at [1987] 1 CLJ 588

a

b

c

d

e

f

g

h

i